

**MINUTES**  
**CITY OF KNOXVILLE, TN**  
**BUILDING BOARD OF ADJUSTMENTS AND APPEALS**  
**MEETING: JANUARY 16, 2015 -- 9:00 A.M.**  
**SMALL ASSEMBLY ROOM – CITY/COUNTY BUILDING, 400 MAIN STREET**

**ROLL CALL**

The meeting was called to order at 9:02 a.m. Members present: Doyle Webb, William Waters, David Ilove, and John Kenny.

Others in attendance: Sonny Partin, Fire Inspections, Peter Ahrens, Plans Review & Inspections Director; Crista Cuccaro, Law Department; and Debbie Brooks, Board Secretary.

**CONSENT ITEMS**

None.

**APPROVAL OF MINUTES**

Board member William Waters made a motion to APPROVE the November 21, 2014 meeting minutes. The motion was seconded by Board member David Ilove. **The Board voted 4-0 to APPROVE the November 21, 2014 meeting minutes.**

**NEW BUSINESS**

**ADDRESS: 137 E. BLOUNT AVENUE**

Owner: Blanchard & Calhoun

Requested by: Kenneth Ellsworth

**BD01A15BU                      2012 IBC, SECTION D102.2.7**

**Request:**

To allow the use of vinyl windows for their superior thermal performance.

Kenneth Ellsworth, Davis Architects, 1000 Marietta Street, Atlanta, Georgia, said this request was for the Riverwalk Apartments across the river from this building. Mr. Ellsworth said it was a 312-unit, Type III-A construction apartment building. Mr. Ellsworth said it was actually two buildings on site separated by a 75-foot wide new corridor toward the river. Mr. Ellsworth said they were asking to be allowed to use vinyl windows *in lieu* of aluminum windows. Mr. Ellsworth said the property was in the Fire District and this triggered the requirement to use the aluminum windows. Mr. Ellsworth said they were under the 2012 Energy Code that required specific "U-Factor" value on the windows. Mr. Ellsworth said this was very difficult to do on aluminum windows. Mr. Ellsworth presented some cut sheets on windows using comparable glass (1-inch insulated unit, inner-gas filled, and low E coating). Mr. Ellsworth said the sheets showed the differences in U-Factor between the vinyl windows at 0.28 and the aluminum at 0.45. Mr. Ellsworth said this did not meet the energy code that they needed. Mr. Ellsworth said in addition, the South Waterfront District had criteria to be LEED certifiable and this had another set of sustainability requirements for it. Mr. Ellsworth said they were not asking for all of the windows to be vinyl and presented a diagram showing in green the areas that were aluminum store front system as part of the zoning there. Mr. Ellsworth said all of the store fronts along E. Blount Avenue were required to be store fronts. Mr. Ellsworth said everything in green was store fronts. Mr. Ellsworth said they also had the

tower elements that were aluminum store fronts. Mr. Ellsworth explained that the blue areas were where the metal balcony doors were (with 3-, 6-, or 9-foot wide openings). Mr. Ellsworth said only the areas that were not green or blue were where they were asking to use vinyl windows. Mr. Ellsworth said the total came to 630 windows (2 windows per unit) which were pretty low for the actual amount of vinyl.

No opposition was present at the meeting.

Peter Ahrens, Plans Review & Inspections Director, said the Fire District prohibited the vinyl windows. Mr. Ahrens said he did not see where the vinyl was consistent with the construction type that was required in the Fire District. Mr. Ahrens said he did not see where there was any proposal to make adjustments for that reduction in the fire design. Mr. Ahrens said it appeared to be an increase in the fire load for the structure. Mr. Ahrens said he had no experience of a fire event with Type III construction with vinyl windows so he was not sure how that would play out in a fire event. Mr. Ahrens said he did not see any areas where the applicant has tried to increase the fire protection in other areas to make up for the added fire load of the vinyl windows.

Sonny Partin, Fire Inspections, asked Mr. Ellsworth how many windows they were talking about and what the square footage of the building was. Mr. Ellsworth said 636 windows and roughly 30,000 square feet in each building. Mr. Partin said due to the fact it was in the Fire District, the building size, and the amount of windows, Fire Inspections could not be in favor of this variance request.

Board member David Icove asked if the window itself in the frame was an Underwriters Laboratory listed assembly. Mr. Ellsworth said he believed it was but did not have that information with him. Mr. Icove said the Underwriters Laboratory had listed criteria of whether or not the windows and doors in their framework were listed and they did a fire protection assessment of it. Mr. Icove said usually they would have a listing that would go with the data sheet if it was listed. Mr. Ellsworth said he did not see it in his paperwork but could supply the information. Mr. Icove asked the staff about the designation for the Fire District and was there a special criteria to be met by that as far as windows and doors and the exterior finishes and was there anything in particular that the staff would get concerned about. Board member John Kenny said the vinyl was prohibited specifically in the Fire District. Mr. Partin said because of it being in the Fire District, it was required to be a certain type of construction with a certain type of exterior and finishes. Mr. Partin said this did not meet the criteria of the finish per the Building Code. Mr. Icove asked if that was because of an exposure, fire-made, compromised window. Mr. Partin said yes.

Mr. Ellsworth said they were on the Tennessee River so there were no other buildings with 70-75 feet of them with the exception of the Medical Tower which was a concrete building and on that side there were very few windows. Mr. Ellsworth said between the two buildings there would be 75 feet with East Blount Avenue on the south and Henley Street on the west. Board member William Waters asked Mr. Partin if that made any difference to him that there were no other buildings nearby. Mr. Partin said it did and they did not see exposure fires from other buildings. Board Chairman Doyle Webb asked if the main reason the applicants wanted to go with aluminum was the energy efficiency of the windows. Mr. Ellsworth said that was correct. Mr. Webb asked if they could not get that out of the aluminum windows that were required. Mr. Ellsworth said not for this project. Mr. Partin asked if that was the only option (the proposed aluminum) other than the vinyl. Mr. Ellsworth said yes. Mr. Partin asked about aluminum-clad windows and if they would perform the same. Mr. Ellsworth said the aluminum-clad windows were around a wood base which was not protective wood but combustible wood which would give the same issue as the vinyl windows. Mr. Ellsworth said he did not have the thermal performance specifications on the aluminum-clad windows. Mr. Kenny said he would like to get a statement that would indicate they could not meet the energy code because it was kind of their statement here without this. Mr. Kenny said if there was just a conflict that they could not get there from here then he would like a little more information that stated that. Mr. Ellsworth said he did have the contract report that they had run on the

project. Mr. Ellsworth said the report showed that for a metal-framed window they needed a U-Factor of 0.380 and the U-Factor on the aluminum windows (thermally-broken, insulated glass) was 0.45 which was significantly higher. Mr. Kenny asked if that was the best he could get in that with any option. Mr. Ellsworth said the thermally-clad aluminum with insulated glass was the best he could find. Mr. Waters asked if the Board denied the request what the applicant would do. Mr. Ellsworth said that was a good question. Mr. Ellsworth said he would go back to the owner and re-evaluate the situation. Mr. Icové asked what the cost differential was between the aluminum versus the vinyl. Mr. Ellsworth said he did not know cost numbers but had been told it was significant. Mr. Kenny said he had not run across this since he had been on the Board but he would like to table this himself to do a little more research. Mr. Kenny said if they simply had a conflict in codes the Board needed to find a way out and did not know what that might be. Mr. Kenny said he did not feel he was getting enough of what the options were. Mr. Webb said he agreed. Crista Cuccaro, Law Department, said the Board could make a motion to postpone the request to a specific date as an option.

Board member John Kenny made a motion to POSTPONE the one variance request until the February 20, 2015 meeting and it was seconded by Board member William Waters. **The Board voted 4-0 to POSTPONE the one variance request until the February 20, 2014 meeting.**

---

**ADDRESS: 110 W. MAGNOLIA AVENUE**

Owner: Courtland Group LLC

Requested by: Scott Osborn

**BD01B15BU**

**2012 IBC, SECTION D102.1**

**Request:**

Allow Type V-B construction in a vertical addition to an existing building.

Additional support documents are attached.

Scott Osborn, R2R Studio, said he was representing Jeffrey Nash, Courtland Group, LLC. Mr. Osborn said their request was to have a vertical, Type V-B construction on the south-faced wall of the 110 West Magnolia Avenue property. Mr. Osborn said in their conversations back and forth with the Plans Review and Inspections and the Fire Marshal's office, there were several areas on the south façade that had exposure to an adjacent property. Mr. Osborn said it has been requested that they bring those areas up to a 2-hour equivalency that were currently wood. Mr. Osborn said the existing building was masonry on that façade and they have added a couple of areas on the second level and added a third level to that of wood construction. Mr. Osborn said the request and the conversation were to bring those up to a 2-hour equivalency based on the code. Mr. Osborn said their request was to modify those areas on the south side, three areas on the second level, and the third level up to a 2-hour equivalency. Mr. Osborn said in order to bring the property up they had talked about and will implement a sprinkler system in the retail portion of the site. Mr. Osborn said they had gone back and forth with Plans Review and Fire Inspections quite a bit during this process. Mr. Osborn said the assembly would be on those two areas that he referenced on the south façade and it was currently constructed out of wood. Mr. Osborn said it would be brought up to a 2-hour equivalency by two layers of interior sheetrock with a foam-filled cavity with fire-proof foam based on the recommendations by Performance Design Technologies (PDT) in Knoxville. Mr. Osborn said on the exterior they would leave in place the current exterior material and add a layer of sheetrock or exterior sheathing and a layer of cement board and then a stucco finish. Mr. Osborn said all of this has been run through Performance Design Technologies and he would receive a letter stating that they were in agreement and support this assembly as an equivalent to the 2-hour

rating. Mr. Osborn said that was one portion of it and the sprinkler was the second portion of it. Mr. Osborn said the third request for a variance would be to allow an EIFS (Exterior Insulation and Finish System) finish around the doors and windows up the south façade attached to the existing brick wall structure which was 3-4 wide brick thick. Mr. Osborn said he had also spoken to Ken Dungan, Senior Fire Protection Engineer, at Performance Design Technologies and Mr. Dungan was in support of that this was not a hazard in the application that they were asking for. Mr. Osborn said this was based on the fact that this was not a structural but a decorative element and it was in such a limited area of the façade portion. Mr. Osborn said he thought this covered the requests and the conversations that had been between Plans Review, Fire Marshal, the owner, and himself.

No opposition was present at the meeting.

Peter Ahrens, Plans Review & Inspections Director, said he wanted to give a background update and the context of why they were at the meeting. Mr. Ahrens said the project was started in a C-3 Zoning District and they had issued a foundation permit. Mr. Ahrens said the C-3 District was not in the Fire District. Mr. Ahrens said at a later date the owner rezoned the property into C-2 Zoning in order to allow some residential use in that area. Mr. Ahrens said the rezoning subsequently put the property into the Fire District so when the plans examiner reviewed the plans for the balance of the construction he did not pick up the fact that it was in the Fire District. Mr. Ahrens said the architect did not address the fact that it was in the Fire District as well so now they were at the point that they have realized it was in the Fire District. Mr. Ahrens said the Fire District did not allow Type V construction. Mr. Ahrens said the conversations between Sonny Partin, Fire Marshal, and himself was they had Type V construction which was prohibited and what they could do to reduce the fire load to maintain the protection to the adjacent properties. Mr. Ahrens said that was why they were focusing on the south-facing walls and the 2-hour rating they were proposing was what was required. Mr. Ahrens said in the Fire District if they were going to have fire-retardant lumber in a wall it would be a 2-hour rating. Mr. Ahrens said this was a situation when Fire Inspections and Plans Review was acting as one and they wanted to make sure the building was safe for future development on the south side.

Sonny Partin, Fire Inspections, said he agreed with everything Mr. Ahrens and the applicant had said regarding their conversations about what had happened. Mr. Partin said it has been a challenging project to try to come to an agreement that they would all feel comfortable with before proceeding further. Mr. Partin said it was three-fourths the way done as far as all of the exterior work. Mr. Partin said they were fortunate that the exposure wall (not only exposed to an existing building) was exposed to a property line of a new 3-story residential building. Mr. Partin said it would be in the Fire District also and built the way it was supposed to be. Mr. Partin said the other walls were completed and they were willing to leave those walls completed due to the fact that they did not feel there were any exposure hazards on those sides. Mr. Partin said the other three walls were not in compliance but they were willing to allow those to stay and they were completed. Mr. Partin said they tried their best to have an agreement that nothing was being taken off of the building that was already built. Mr. Partin said they did try to work with what was left and what they could do to go forward. Mr. Partin said it was non-combustible required on the exterior walls. Mr. Partin said there was a small amount on the second story on the exposure side and a third wall that was set back 16 feet that was combustible on all four walls. Mr. Partin said their one concern was the one wall was to the property line and the exposure to the new building. Mr. Partin said this was the wall that they wanted to recommend that it be 2 hours with the foam filling. Mr. Partin said that was something they had allowed in the past and under the fire protection engineer's guidance they have agreed that was in the works. Mr. Partin said they would be in favor of allowing the second and third walls to be modified as an equivalency. Mr. Partin said in regards to the retail building on the property that was not sprinkled and not required to be sprinkled, they were in favor of this building being sprinkled for an equivalency due to the fact that it was near the building. Mr. Partin said the wall that was in exposure to the 3-story building was not completely in compliance because of the stucco but they did

not finish talking about that. Mr. Partin said he did not know if they needed to get into that at the meeting but they were in favor of the proposal to sprinker that building with the 13-system. Mr. Partin said he wanted to make sure he clarified why they were in approval with the proposal but also wanted to make sure the Board members understood where the staff was at. Mr. Partin said he apologized for the long narrative but he really felt it needed to be said just to make sure the Board understood. Mr. Partin asked Mr. Osborn on the second and third floors if they were proposing to cover the areas that were combustible with stucco. Mr. Osborn said that was correct. Mr. Partin asked Mr. Osborn to tell him what the assembly looked like on the exterior that they were proposing. Mr. Partin said they would like to see a hardy-plank type board that they felt would be a better equivalence than stucco due to the way it was assembled and held up. Mr. Partin said he did want to on record discuss what Mr. Osborn was proposing with the stucco.

Mr. Osborn said regarding the assembly they had discussed, he felt very confident in the interior with the foam-filling and the exterior had a current layer of OSB boards that was in place. Mr. Osborn said, based on the conversation with Performance Design Technologies, by filling the cavity with the foam that would become non-combustible as the foam created that in cancellation. Mr. Osborn said on top of the existing exterior OSB there would be a layer of exterior sheathing. Mr. Partin asked what the exterior sheathing was. Mr. Osborn said it was 5/8-inch Gypson material and that was part of the exterior portion of the assembly. Mr. Osborn said the outer layer then would be a cement board that he felt was equivalent to what their conversations have led to (hardy-plan type board). Mr. Osborn said it was the same material and the same component of the material and the cement board would then accept the direct-applied stucco material without any foam. Mr. Osborn said Performance Design Technologies was in agreement and willing to state this in correspondence to him if needed. Mr. Osborn said the exterior was achieving what Fire Inspections had requested in terms of the cementous material and the stucco finish did not have a fire component or things that would trigger not being allowed in the Fire District due to fact that they have eliminated the insulation portion of EIFS. Mr. Osborn said he believed that was the reason why the Fire District did not allow it because it was a form of plastic and that was the definition by the code in the Fire District that plastic was not allowed. Mr. Osborn said they had eliminated that portion and applied it to a cementous material which was equivalent to the hardy-plank type board. Mr. Partin said that was a last minute thing earlier in the morning that he and Mr. Osborn had discussed and it was not completely understandable until now. Mr. Partin said what Mr. Osborn was proposing for the wall would be acceptable for them and thought it would be equivalent to what they had originally asked for. Mr. Partin said with all of those things in place, they would be in favor of the proposal of the EIFS around the doors only if they were on a non-combustible surface and no more than 4 inches thick. Mr. Osborn said it would be a trim and he would like to amend doors and windows. Mr. Partin said doors and windows were okay. Mr. Partin said they would be in favor of their proposal.

Crista Cuccaro, Law Department, asked Mr. Partin about making the specifications as conditions upon the variance approval and she felt the Board should list those out so the Board member would be clear upon making a motion if he wished to include those conditions.

Board member John Kenny said he believed the Board's charge was strictly the request to allow Type V-B construction because that was the conflict they were dealing with relative to the Fire District. Mr. Kenny said that was on the table right now. Mr. Kenny said if it had been constructed prior to the rezoning, it would have potentially been allowed because it was not in the Fire District. Mr. Kenny said it could have been rezoned as an existing building. Mr. Kenny said they might end up with the same result if they allowed it at this point in time. Mr. Kenny said there was a timing issue here that could have caused this problem. Mr. Ahrens said he would have to research the Hazard Classification. Mr. Ahrens said the purpose of the rezoning was to introduce residential and he would have to research to see if the existing construction could be used in potentially a fire hazard classification. Mr. Ahrens said there might be a breakdown and he saw where Mr. Kenny was going with this. Mr. Kenny said the Type V-B was

allowed for that occupancy under the building code but the real issue became the Fire District construction issues. Mr. Kenny said they just changed zoning which brought them into the Fire District. Mr. Ahrens said the zoning was changed because of the use. Mr. Ahrens said if it was constructed in C-3 Zoning, they could not have had the residential use. Mr. Kenny said the sequence may have allowed this to happen if it had been a different sequence. Mr. Ahrens said that was a true statement. Mr. Kenny said if the Board moved to approve the request provided the assemblies met or exceeded fire separation requirements as determined by the fire protection engineer and as approved by the fire marshal – did this seem to be something reasonable that would at least allow them further review because he did not think the Board had any documentation from the fire protection engineer today. Mr. Kenny said there had been a lot of information provided which would be stipulations to some degree. Mr. Kenny asked for comments.

Board member David Icove said, for the Board's understanding, he would like each Board member to receive an updated district zone map to what are the different rates zones. Mr. Icove said the maps would familiarize the Board members. Mr. Icove said specifically in this case, this might be a situation that they might want to defer this item to the next meeting. Mr. Icove said to have a fire protection engineer to give you a letter versus for the engineer to sign and seal your plans meant a lot with him. Mr. Icove said there was a lot of hand waving going on regarding the exchange of letters. Mr. Icove said if the fire protection engineering firm was going to make an equivalency based on an evaluation he would like to see them sign along with the applicant and seal the plans and have the plans submitted. Mr. Osborn said Ken Duncan had reviewed the detail and Mr. Osborn had no problems requesting for him to do that. Mr. Osborn said Mr. Duncan had stated that was something he was not opposed to doing. Mr. Icove said that would have been something in the agenda packet that he would have liked to see ahead of time before making a decision. Mr. Osborn said the time period in which this has come about had been very short and there had been subsequent conversations almost daily to get to a point where there was an understanding of direction. Mr. Osborn said he wanted to apologize that did not give them time to give the Board members a complete package of information. Mr. Icove said that reinforced that they might want to defer the item until the next meeting when they could get all of the information. Mr. Waters asked Mr. Osborn if that would be a disadvantage to him if they deferred the item for a month. Mr. Osborn said it would. Mr. Ahrens said if the Board's concern was whether or not they received the information from the fire protection engineer, the Building Inspections Department was happy to get the information and ensure that the information would meet the minimum requirements set. Mr. Ahrens said if the Board wanted to set the expectation today without the letter from the fire protection engineer, he had no problems with the Building Department ensuring that the documentation was submitted and adhered to before they signed off on anything. Mr. Icove asked if they would have the fire protection engineering firm to seal the plan along with the architectural firm. Mr. Osborn said he would request that they seal the detail that was associated with this particular matter. Mr. Icove said he would like to see them seal the plans because they were talking about the entire enchilada here and not just an equivalency rating. Mr. Icove said they were dealing with assumed sprinkled apartments but then why were the offices unsprinkled. Mr. Osborn said per code the offices were not required to be sprinkled. Mr. Ahrens said if it was a separate fire area then it did not reach the threshold in that business occupancy to require fire sprinklers. Mr. Icove asked if Mr. Ahrens was okay with that. Mr. Ahrens said not in the current circumstances. Mr. Icove said there could be a change in occupancy as far as the offices. Mr. Osborn said he thought to that point that was the reason the conversation had led to that portion of the project being sprinkled. Mr. Icove asked if that was to sprinkle the offices, too. Mr. Osborn said yes. Mr. Icove said Mr. Osborn had two routes. Mr. Icove said the Board would not vote on this, it would go back for a review and asked why it was here now. Mr. Ahrens said the Type V-B construction was already there and they were trying to work with the owner to prevent him from having to potentially remove that construction. Mr. Icove asked if this was possibly a premature appeal and could this have been administratively addressed in the review. Mr. Ahrens said in their initial meeting with the owner when they talked about a fire design professional that was off the table at that point. Mr. Ahrens said it was

new to him when Mr. Osborn brought that to the table when they sat down in Mr. Nash's office. Mr. Ahrens said that was not an option so without a fire design professional that was when they said the item would have to go to the Board of Zoning and Appeals. Mr. Osborn said he did not recall that specific statement being off of the table. Mr. Osborn said it was something Mr. Nash indicated that he did not want to compensate them for. Mr. Osborn said subsequently in his professional duties, he has taken care of that and moved forward to ensure that what they presented to the Board had been reviewed and subsequently will be sealed the detail and the equivalency on that wall.

Board Chairman Doyle Webb asked the Board to address the motion on how they wanted to do this. Mr. Webb said he was leaning toward Mr. Kenny's motion to approve it with having them to follow up to make sure it has been done the way they were talking about. Mr. Kenny said relative to equivalencies and bringing in a fire protection engineer was allowed by the code. Mr. Kenny said the real issue that they were dealing with in his opinion was strictly to allow Type V. Mr. Kenny said if they were just dealing with the equivalencies, they did not need the Board for that because that was allowed in the code. Mr. Kenny said the reason he brought up the statement about if this was done in a different sequence they could possibly end up with the same result, he thought was somewhat pertinent. Mr. Kenny said that had to do with how the review was handled with it being not in the district and how it was in the district. Mr. Kenny said from his perspective given the fact that they were a little out of sequence, it appeared as though they were going a little bit beyond the code requirements. Mr. Kenny said by adding some fire protection beyond what was required and by bringing in the fire protection consultant to provide some equivalencies, these were costs understandably on a developer for doing that. Mr. Kenny said he understood there was some error in the sequence and penalty for that. Mr. Kenny said he believed in this case the people on all sides have been responsible and acted in good faith and he thought they would end up with a reasonable result if they put this in the hands of the fire marshal and the Building Codes Department. Mr. Kenny said that was why he wanted to make the motion and he understood when you are under construction should the Board delay this item for a month there was a penalty associated with that as well. Mr. Kenny said he did not formally make a motion but was actually sending it out for discussion. Mr. Kenny said maybe before he makes the motion the Board should discuss it further. Mr. Waters said if Mr. Kenny made the motion, he would second the motion and then they could discuss it. Mr. Kenny said that was fine by him.

Board member John Kenny made a motion to APPROVE the request with the condition that the assemblies meet or exceed the fire separation requirements as determined by a fire protection engineer and as approved by the fire marshal and codes enforcement. Board member William Waters seconded the motion. Mr. Waters asked what the staff meant by sealing the plans. Mr. Ahrens said engineers have a seal (certification stamp) that is used to seal the plans with the stamp and makes it official. Mr. Osborn said basically as a professional that is the indication that the information provided is approved by you and subsequently the responsibility is then born on the person who seals the plans. Mr. Icové said in this situation there was a building in which two things were going on: 1. Equivalency rating, and 2. The reevaluation and the sprinklering of the offices. Mr. Icové said this raised it to the level of the fire protection engineering firm doing an overall review of the plans for their due diligence that they are applying it correctly. Mr. Icové said his only concern was this level of participation. Mr. Icové said he would feel more comfortable if along with the seal of the architect that the plans also have a seal from the fire protection engineering firm that they have reviewed and approved in total the whole project. Mr. Icové asked Mr. Partin in a sprinkler review if the City of Knoxville required a *bona fide* fire protection engineering firm to seal the plans for a retrofit for sprinkling. Mr. Partin said no. Mr. Partin said they require a mechanical engineer, an architect, or an engineer competent in sprinkler design. Mr. Osborn said a sprinkler layout had been provided in the shell building. Mr. Osborn said it had been sealed and submitted as a part. Mr. Osborn said it was when the occupancy that was currently being assessed and going to be utilized, the unsprinklered portion of the conversation came to life.

Crista Cuccaro, Law Department, said there were four Board members and they would need a majority of three members voting affirmative to pass the motion.

Board member John Kenny repeated his motion that was seconded by Board member William Waters: *Move to APPROVE the request provided the assemblies meet or exceed the fire separation requirements as determined by a fire protection engineer and is approved by the fire marshal and codes enforcement. The Board voted 4-0 to APPROVE the one request with the condition that the assemblies meet or exceed the fire separation requirements as determined by a fire protection engineer and is approved by the fire marshal and codes enforcement.*

---

## **OTHER BUSINESS**

Debbie Brooks, Board Secretary, explained about the Board members not attending today's meeting:

Gregor Smee -- was not able to attend

Faneshia Powell – sick

Ronnie Wade – Mr. Wade's term expired January 1, 2015, but he was going to try to attend the meetings until his position is filled.

Andrew Lorenz – has changed jobs and asked to be taken off the Board member list.

Ms. Brooks said there were two vacant positions regarding the Board members. Mr. Waters asked who appointed the Board members. Ms. Brooks said the mayor did.

Mr. Webb asked about the Sunshine Law regarding the first variance. Ms. Cuccaro said as Board members they could not discuss something they would be deliberating and voting on with one another outside of a public meeting. Mr. Waters asked if they could contact the applicant or the staff or did the Sunshine Law mean they could not discuss it amongst themselves. Mr. Icové said there was a clarification of that because he had a question at one time and it was approved by the Law Department that if he wanted to reach out and personally visit the property and talk to the owner it was not in violation of the Sunshine Law as long as he did not bring another Board member along or someone from the City of Knoxville. Mr. Icové said it was okay for him to visit the property and there was one case where he did that. Mr. Webb said where the problem was that put the Board members in more liability. Ms. Cuccaro said she thought that could be in the scope of the Board members' duties possibly but there was also an argument that it was not in the scope. Ms. Cuccaro said the protection they would be afforded as Board members might be diminished in that situation. Ms. Cuccaro said that came up as a question when Ms. Rauber was still here and Ms. Cuccaro was clerking for the City of Knoxville and they had discussed that. Ms. Cuccaro said she thought if that was the prior determination then they would continue with that. Ms. Cuccaro said a Board member could go out and talk to the owner but not more than one at a time. Mr. Waters asked why it was in violation if two Board members went out and listened to the owner but did not discuss the situation among them. Ms. Cuccaro said they wanted to consider what the deliberation was but also wanted to consider as a municipality what the appearance of the violation could be. Ms. Cuccaro said they wanted to advise the Board members to avoid those types of situations if they could. Mr. Icové said in the instances where he went out, it was very beneficial. Mr. Icové said one instance was an egress issue. Mr. Icové said another instance was where they made an appointment to go out and the applicant decided to go with the recommendations from the City of Knoxville on a fire equivalency. Mr. Icové said he needed to see what was going on and also what the fire protection engineering firm had recommended. Mr. Waters said not being a contractor, architect, or a fireman, to him looking at the variance request information was basically a bunch of mumbo jumbo to him. Mr. Waters said a lot of times when he attends the meeting he receives a better understanding because the



staff and the Board members does a great job presenting the codes. Mr. Waters said it was a lot easier if you have a chance to look at what you are dealing with and talk to the individual. Mr. Waters said it was very difficult for an attorney to come in and understand this because he did not do this all of the time. Mr. Webb said it was up to the applicant to give the Board members and the staff the information. Mr. Webb said if the Board members did not feel comfortable then they postpone the item to get more information. Mr. Webb said it was the applicant's job to present the information and then receive the staff recommendations. Mr. Webb said he did not want to be put in a liable situation of going to the property. Mr. Webb said if he needed more evidence at the meeting then they could ask the applicant to present more information. Mr. Webb said he thought that would be more appropriate than putting them out there on the line.

Board Chairman Doyle Webb asked Mr. Ahrens in regards to Item BD01A15BU that had been postponed to the February 20, 2015, meeting if there were any other windows that would meet the code and still get their R factor. Mr. Ahrens said he would imagine yes. Mr. Ahrens said with enough money you could buy anything. Mr. Ahrens said their policy was to allow wood windows in the Fire District and much of the downtown area was in the Fire District. Mr. Ahrens said it was also in the Historic Zone and the Historic Zone required wood windows. Mr. Ahrens said they have allowed wood windows. Mr. Ahrens said if the applicant was not aware of this he would make sure to inform the applicant of that. Mr. Ahrens said clad wood windows would be an alternative. Mr. Waters asked if wood windows were less combustible than vinyl windows and was there a preference of wood windows over vinyl windows. Mr. Partin said yes especially if there were aluminum-clad windows. Mr. Partin said he could see why they would not want wood windows because painting them would be a nightmare. Mr. Partin said wood-framed with aluminum-clad windows would be a good option and this was a last minute thing for them yesterday as they were discussing it. Mr. Ahrens said these windows acted differently in a fire event. Mr. Icové said usually these assemblies have pre-existing test data and a UL Listing for it to know what the performance criteria are. Mr. Icové said to come up with one that did not have a UL Listing put them at a loss to evaluate. Mr. Kenny said if it was actually a fire-retardant wood it would meet the Fire District requirements. Mr. Ahrens said if the applicant came to the staff with clad wood windows they would not need to seek a variance because the code would allow them. Mr. Icové said he had sat on the ICC Log Cabin Committee. Mr. Icové said log cabins did not meet the energy efficiency under the existing ICC Code at this time. Mr. Ahrens said Pennsylvania exempted log cabins from the Energy Code for that reason.

Fire Marshal Sonny Partin said Ms. Cuccaro had brought up some things about detailing on the second variance request (BD01B15BU). Mr. Partin said he thought Mr. Kenny had covered the equivalency generally and wanted to know if they were going to put some wording in there to cover it legally to take care of the small details that were of concern. Mr. Webb said Mr. Kenny had conditioned it upon the approval by the fire marshal and that would be Mr. Partin's specifications to what it would take to approve it. Mr. Kenny said his motion said that the assemblies meet or exceed the fire separation requirements as determined by a fire protection engineer and is approved by the fire marshal and codes enforcement. Mr. Partin said that sounded good and his intentions were to stick to what they had talked about. Mr. Kenny said this would wrap it all up. Mr. Kenny said to him the key was the Board members would not have been here if the sequence had been different. Mr. Kenny said that was unfortunate because of that they were discussing it here. Mr. Kenny said that put a bunch of people in a bad position and everybody was trying to find a good solution. Mr. Webb said he thought that was a good motion.

Mr. Waters asked Mr. Partin if there was only one Fire District or multiple Fire Districts with different requirements. Mr. Partin said there was one Fire District and they had a map. Mr. Partin said it was referred to as the 1<sup>st</sup> Fire District and the 2<sup>nd</sup> Fire District just because that was the way it was looked at a long time ago. Mr. Partin said it used to be mostly the downtown area and some condensed areas. Mr. Partin said now it was specific zonings (5 or 6). Mr. Partin said the Baptist Hospital site was in the Fire

District and also The Strip (Cumberland Avenue) was a Fire District now. Mr. Ahrens said the intent of the Fire District was to reduce the potential of fires spreading from one building to other buildings. Mr. Ahrens said in zoning districts that permit and actually encourage very dense construction with zero lot lines and large floor area ratios those were the zoning districts that were subsequently kicking the properties into the Fire District. Mr. Icové asked about plans or did they preexist for a marina or a dock district. Mr. Icové said his concerns came from previous experience with marinas and also with other cities that have defined marine districts with special hazards (yacht club, refueling station, etc.). Mr. Icové asked if there were plans to define a waterfront district or the equivalent for the City of Knoxville. Mr. Ahrens said no. Mr. Ahrens said they were captured under the base zone and the specific requirements to ensure safety were regulated under the Building Code and the National Electric Code (NEC). Mr. Ahrens said there were certainly heightened restrictions for those types of uses and occupancies but as a specific zone he had not heard of anything in the works. Mr. Icové said when he worked for Tennessee Valley Authority (TVA) they had concurrent jurisdiction with the Coast Guard and spent a great deal of time looking at the marinas and making sure the marinas met the fire-protection standards and the safety standards. Mr. Kenny said if the marinas were going to be on the water here they would have to meet the TVA requirements and get a permit to be out there. Mr. Kenny said he had a dock and had to get a permit. Mr. Icové said when he worked there they never had any interface with the City of Knoxville regarding the marina or the waterfront. Mr. Icové said their concern was whether or not they were dispensing fuel. Mr. Webb asked if TVA addresses that when they grant their permits. Mr. Kenny said he had been involved with marina design projects and when you go through TVA and TDEC it was pretty much every "i" was dotted and "t" was crossed. Mr. Kenny said the building part was easy. Mr. Icové asked if there was some kind of review process now that TVA does for the waterfront. Mr. Partin said the only review process he was aware of was where you could connect to the dock and to the shore. Mr. Partin said once that has been approved then it is required to go through the building permit process which he would be involved in. Mr. Partin said then it would be required to comply with adopted codes. Mr. Partin said this was the only part he knew about. Ms. Cuccaro said the 26A Permit was what the City of Knoxville typically interfaced with TVA on. Mr. Icové said the situation was on Boomsday the population tripled. Ms. Cuccaro said if the individual Board members felt the City of Knoxville needed to take a look at a marina district or dock district her recommendation would be to write a letter to the administration requesting the consideration of a marina district. Mr. Icové said the question was had anyone come forward with any plans to put in refueling facilities close to the waterfront area. Mr. Ahrens said in that situation the City Engineering Department would also be involved in ensuring the capture of any spill event. Mr. Ahrens said City Engineering regulated the storm water, erosion, and sediment control and he was pretty sure they would review the policies associated with the refueling facility review.

Mr. Icové asked if there were appropriate guidelines for a uniform packet for each item reviewed by the Board members. Mr. Icové said some packets are perfect (the plans, engineering documents, etc.) including everything that he would need independently to study before the Board meeting. Mr. Icové said some packets have a sheet of paper with an attached memo. Mr. Ahrens said the department encourages the applicant to give enough information for the Board members to make a good decision. Mr. Ahrens said the department could not provide that information for the applicant. Mr. Icové asked if the Board could recommend that there be a minimum standard set of documentation. Ms. Cuccaro said she would look into that. Ms. Cuccaro said she did not think this Board had the administrative rules like the Board of Zoning Appeals had. Ms. Cuccaro said she would look into how this Board could adopt some administrative rules because that would be proper place to have specifications or here was what the Board considered to be a complete application. Ms. Cuccaro said it could not be placed on the agenda until the staff had the complete application that is spelled out. Ms. Cuccaro said she would try to have an answer by the next meeting. Mr. Icové said he was concerned because he received a warning from his personal attorney about the liabilities of sitting on this Board. Mr. Waters said he spent two-thirds of his life in court some one more lawsuit was one more lawsuit. Mr. Webb said if they did not receive enough information the Board could vote it down. Mr. Webb said it would be the applicant's job

to convince the Board they have enough stuff to make it work and if they do not, the Board can vote it down. Mr. Partin said the staff did require the applicant to give them all of the information they could up front. Mr. Partin said the BBAA deadline was last Tuesday and the staff review meeting was last Wednesday morning. Mr. Partin said the meeting was to make sure the applicants have supplied enough to give to the Board members. Mr. Partin said they request what they think needs to be filled in the packet. Mr. Partin said there was a small window to get any additional information before the packets are sent out. Mr. Partin said Mr. Ahrens had requested the applicants to submit all they can into their favor to prepare the Board members. Mr. Partin said if the Board members came to the meeting unprepared with the information they needed, the Board members would not be prone to be in favor of the requests. Mr. Partin said the staff tells the applicants to give as much information as possible to prepare the Board members to give a good ruling. Mr. Waters said Ms. Brooks does a great job of getting the agenda packets to the Board members and he always reads his packet before attending the meeting. Mr. Waters said the staff has dealt with the applicants and know what the issues are and when the Board members attend the meeting they are still struggling with the requests. Mr. Webb said he uses the staff recommendations because the staff is out on the projects and talking to the applicants. Mr. Webb said if the staff is in support of the request, this weighs a lot to him. Mr. Ahrens asked if a pre-agenda meeting would be beneficial for the Board members to sit down and work through the packet for a better understanding. Mr. Waters said it really would be but the problem was they had a hard enough time getting a quorum to come to the meetings. Mr. Waters said if they had a pre-agenda meeting there might be so issues. Ms. Cuccaro said Board of Zoning Appeals holds a pre-agenda meeting (public meeting) at 3:00 p.m. before the BZA meeting at 4:00 p.m. Ms. Cuccaro said they review everything in a public setting. Ms. Cuccaro said the public is welcomed to attend this pre-agenda meeting but do not participate in the meeting. Ms. Cuccaro said the pre-agenda meeting gives the Board members an opportunity to ask questions and get clarification so when they are at the BBAA meeting and making their decisions they have some of that in their minds for consideration. Ms. Cuccaro said the Board members could ask the applicants more questions at the meeting. Ms. Cuccaro said the pre-agenda meeting would need to be publicly noticed. Mr. Ilove asked about coming to the office and reviewing the complete file. Ms. Cuccaro said that would be fine. Mr. Ahrens asked if the Board members had questions could they call Mr. Partin or himself to get clarification. Ms. Cuccaro said that was fine. Mr. Ahrens said if the Board members were reviewing the agenda packets and had questions, he and Mr. Partin would be available to answer any questions and provide clarification. Mr. Waters asked if the staff could add Mr. Ahrens and Mr. Partin's phone numbers and email addresses to the agenda sheet. Ms. Brooks said she would put the phone numbers and email addresses to the agenda sheet for Mr. Partin and Mr. Ahrens. Ms. Brooks asked if they would run into a problem with the Board members sending emails to the staff. Ms. Cuccaro said if the Board members individually wanted to discuss a request with the staff, she did not think there was a problem with that.

## **ADJOURNMENT**

The meeting was adjourned at 10:19 a.m.

Minutes were taken and typed by Deborah Brooks, Board Secretary.